

**United States Department of Labor
Employees' Compensation Appeals Board**

S.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Somerset, NJ, Employer**

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**Docket No. 16-0056
Issued: March 9, 2016**

Appearances:

*Robert D. Campbell, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 13, 2015 appellant, through counsel, filed a timely appeal from an August 21, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition on December 10, 2013 causally related to the accepted employment incident.

FACTUAL HISTORY

On December 10, 2013 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date, at 10:00 a.m., while sitting in a chair and pulling on snow boots, the chair came out from under him and he fell, injuring his lower back. He

¹ 5 U.S.C. § 8101 *et seq.*

stopped work on December 10, 2013 and has not returned.² The employing establishment controverted the claim on the grounds that appellant delayed in reporting his injury until 6:30 p.m. that day. Appellant submitted an illegible medical note with his claim.

In a December 27, 2013 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a detailed description of how his injury occurred, a response to the employing establishment's challenge, and a detailed narrative report from his physician which included a history of the injury and a medical explanation with objective evidence of how the claimed work factors would cause the claimed back condition. It afforded him 30 days to submit such evidence.

OWCP subsequently received a December 20, 2013 prescription note from Shannon J. Radkovich, a certified physician assistant, an illegible prescription note dated December 17, 2013 and a December 30, 2013 work excuse note from Dr. Irving H. Kaufman, a Board-certified family practitioner.

In a January 7, 2014 report, Dr. Andrew K. Ankamah, a Board-certified physiatrist, noted a history of a fall from a chair that had slid out from under appellant at work on December 10, 2013. He also noted that appellant was status post lumbar laminectomy and narcotic drug addiction. Dr. Ankamah noted that a July 25, 2011 lumbar magnetic resonance imaging (MRI) scan showed a new disc herniation at L2-3 compared with previous studies and that April 27, 2012 electromyogram/nerve conduction velocity (EMG/NCV) studies were normal and negative for radiculopathy or peripheral neuropathy. He diagnosed lumbar post-laminectomy syndrome, lumbar degenerative disc disease, displacement of lumbar intervertebral disc without myelopathy; unspecified neuralgia, neuritis, and radiculitis, and lumbosacral sprain. Dr. Ankamah opined that appellant was totally disabled.

By decision dated January 31, 2014, OWCP denied the claim, as fact of injury was not established. It found that appellant had not submitted a detailed description of the reported work incident, had delayed in reporting the injury to the employing establishment, and had continued to work following the claimed work incident, thereby casting serious doubt as to whether the injury occurred at the time, place, and in the manner alleged.

On February 27, 2014 appellant requested a telephonic hearing with OWCP's Branch of Hearings and Review, which was held on August 4, 2014 before an OWCP hearing representative. He testified as to events on December 10, 2013 and that no one witnessed his fall. Appellant indicated that as he walked his route, his back began to stiffen up and was painful, but he wanted to finish his work shift. When he arrived home after work, he had pain in both legs and could hardly walk. Appellant also noted his course of medical treatment. He noted his prior December 2001 work injury, and that he had returned to work full duty approximately one year and nine months after the 2005 surgery related to that injury.

Following the December 10, 2013 injury, appellant returned to work on April 2, 2014 in a full-time, limited-duty capacity. He submitted an undated statement describing the

² Under file number xxxxxx931, appellant has an accepted claim for lumbar degenerative disc disease, lumbar disc displacement, lumbar sprain, and lumbar stenosis from a December 1, 2001 work injury. He underwent an authorized lumbar laminectomy and fusion surgery on February 5, 2005. Appellant returned to work in 2006.

December 10, 2013 work event and a December 11, 2013 prescription note from Barbara B. Weisman, a certified physician assistant.

In a December 17, 2013 note, Dr. Kaufman noted a history of a fall at work on December 10, 2013. He released appellant to work as of December 23, 2013. In a December 30, 2013 report, Dr. Kaufman noted a history of appellant's December 10, 2013 fall at work while putting on snow boots. He noted examination findings and provided an assessment of severe low back sprain mostly in right sacroiliac area on the right. Dr. Kaufman advised that the injury was the immediate and direct result of a fall to floor in the locker room. He opined that appellant was unable to work as a postal carrier with his prior restrictions.

In a February 25, 2014 report, Dr. Kaufman opined that appellant was still disabled from the December 10, 2013 work injury due to severe mechanical back pain, which was a direct effect of the December 10, 2013 work injury. An assessment of drug dependence, inflammatory and toxic neuropathies, depression, osteoarthritis, and backache was provided.

In a March 6, 2014 report, Dr. Kaufman indicated that a work injury caused worsening back pain and contributed to narcotic addiction relapse. He diagnosed backache in connection with the December 10, 2013 work incident. Additional diagnoses of osteoarthritis, depression, and drug dependence were provided.

In a July 16, 2014 report, Dr. David Weiss, an osteopath, related appellant's history of falling from a locker room chair at work on December 10, 2013. He also noted the accepted 2001 work injury and that he had previously evaluated appellant in 2005 with regard to such injury. Dr. Weiss noted positive findings on examination and diagnosed post-traumatic lumbar strain and sprain, aggravation of preexisting lumbar pathology from the 2001 injury, and bilateral lumbar radiculopathy. He opined that the December 10, 2013 incident was the competent and producing factor for the subjective and objective findings contained in his report. Dr. Weiss also provided a lower extremity assessment based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In letters dated August 21 and 28, 2014, appellant's counsel argued that appellant established fact of injury and that Dr. Weiss' July 16, 2014 report noted additional sensory deficits at L4, L5, and S1 dermatomes when compared to his November 18, 2014 report under claim number xxxxxx931. He provided excerpts from both the November 18, 2011 report and a December 12, 2012 hearing representative's decision under claim number xxxxxx931.

By decision dated September 29, 2014, an OWCP hearing representative modified OWCP's January 31, 2014 decision to reflect appellant established fact of injury, but affirmed the denial of the claim as the medical evidence of record was insufficient to establish causal relationship.

On June 19, 2015 OWCP received appellant's June 15, 2015 request for reconsideration of OWCP's September 29, 2014 decision.

In a December 29, 2014 report, Dr. Weiss indicated that he reviewed his reports of June 14, 2006 and July 16, 2014. He noted that an April 1, 2003 MRI scan of the lumbar spine revealed L4-5 disc bulge and a degenerative bulging disc at L5-S1 with facet arthrosis contributing to moderate left and moderate to severe right foraminal stenosis which was related

to the December 1, 2001 work-related injury. Dr. Weiss also noted that appellant had impairments due to L4 and L5 nerve root sensory deficits due to the December 1, 2001 work-related injury. After the December 10, 2013 work-related injury, his evaluation of July 16, 2014 revealed impairment in the L4, L5, and S1 nerve roots. Dr. Weiss opined that given appellant's previous MRI scan of the lumbar spine dated April 11, 2003, it was feasible that his December 10, 2013 trauma caused additional inflammation thereby impinging the S1 nerve root which was already compromised as noted in the April 11, 2013 MRI scan. Additionally, since there were no S1 findings on the June 14, 2006 evaluation to relate to the December 1, 2001 work injury, Dr. Weiss concluded that the new findings related to the December 10, 2013 work-related injury.

By decision dated August 21, 2015, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.⁵ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS

OWCP accepted that the December 10, 2013 incident occurred as alleged, but denied the claim as the medical evidence of record did not establish a causal relationship between the accepted employment incident and the claimed back condition.

In support of his claim, appellant submitted a series of reports from Dr. Kaufman who placed him off work. In a December 30, 2013 report, Dr. Kaufman noted a history of falling at work while putting on snow boots on December 10, 2013. He noted on examination findings and provided an assessment of severe low back sprain mostly in the right sacroiliac area on the right. Dr. Kaufman advised that the injury was the immediate and direct result of a fall to the floor in the locker room. In a February 25, 2014 report, he opined that appellant was disabled from the December 10, 2013 work injury due to severe mechanical back pain, which was a direct effect of the December 10, 2013 work injury. In his March 6, 2014 report, Dr. Kaufman indicated that the December 10, 2013 work injury worsened appellant's back pain and contributed to narcotic addiction relapse. He diagnosed backache in connection with the December 10, 2013 work incident. While Dr. Kaufman provided a definite diagnosis and a clear history of injury, he did not explain how and why the accepted incident would cause the diagnosed conditions. He also did not mention appellant's history of prior lumbar injury and surgery. A mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's work incident could result in the diagnosed condition is insufficient to meet appellant's burden of proof.⁹ Thus, Dr. Kaufman's reports are insufficient to discharge appellant's burden of proof as they do not present a rationalized medical opinion regarding causal relationship.

Dr. Ankamah noted that appellant was status post lumbar laminectomy and narcotic drug addiction and reported the history of injury on December 10, 2013. In his January 16, 2014 report, he diagnosed lumbar post-laminectomy syndrome, lumbar degenerative disc disease, and lumbosacral sprain. However, Dr. Ankamah offered no opinion on the causal relation of appellant's condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ While Dr. Ankamah noted in his January 7, 2014 report that a July 25, 2011 lumbar MRI scan showed a new disc herniation at L2-3 compared with previous studies and April 27, 2012 EMG/NCV studies were normal and negative for radiculopathy, he did not offer an opinion on whether the new disc herniation at L2-3 was related to the December 10, 2013 work injury or provide any medical explanation as to how the work incident of December 10, 2013 caused, aggravated, or contributed to appellant's preexisting back condition. Thus, Dr. Ankamah's reports are insufficient to establish causal relationship in this case.

⁸ *Solomon Polen*, 51 ECAB 341 (2000).

⁹ *See Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁰ *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

In his July 16, 2014 report, Dr. Weiss noted both appellant's prior accepted work injury of 2001 and the December 10, 2013 work injury. He diagnosed post-traumatic lumbar sprain, aggravation of preexisting lumbar pathology from the 2001 injury, and bilateral lumbar radiculopathy and opined that the December 10, 2013 work incident was the competent and producing factor. In his December 29, 2014 report, Dr. Weiss noted objective test results. He indicated that his evaluation of July 16, 2014, which occurred after the December 10, 2013 work-related injury, revealed impairment in the L4, L5, and S1 nerve roots. Dr. Weiss opined that given appellant's previous MRI scan of the lumbar spine dated April 11, 2003, it was feasible that appellant's December 10, 2013 trauma caused additional inflammation thereby impinging the S1 nerve root which was already compromised as noted in the April 11, 2013 MRI scan. Additionally, since there were no S1 findings on the June 14, 2006 evaluation to relate to the December 1, 2001 work injury, Dr. Weiss concluded that those new findings related to the December 10, 2013 work-related injury. However he does not explain how the work incident of December 10, 2013 caused, aggravated, or contributed to appellant's diagnosed conditions. Dr. Weiss does not provide a well-rationalized opinion, regarding causal relationship based on a complete and accurate history of appellant's medical conditions, with explanation regarding the contribution of any nonwork-related factors from the time of the December 1, 2001 work injury to the December 10, 2013 work incident. He simply provides a general conclusion without the necessary rationale. While Dr. Weiss notes that it is feasible that the December 10, 2013 trauma caused additional inflammation which impinged the S1 nerve root, he fails to provide any cause requisite discussion as to why his preexisting conditions were directly affected by the December 10, 2013 work incident. The fact that appellant now experiences additional conditions to his back does not necessarily mean that it was caused or aggravated by the December 10, 2013 work injury. Thus, Dr. Weiss' reports are insufficient to discharge appellant's burden of proof as they do not present a rationalized medical opinion regarding causal relationship.

The remaining evidence submitted by appellant is also insufficient to establish causal relationship. Appellant submitted reports of two physician assistants in support of his claim. However, reports from physician assistants have no probative medical value as they are not considered a physician as defined under FECA.¹¹ Section 8101(2) of FECA provides that the term, "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.¹²

Consequently, appellant has offered insufficient medical evidence to establish his claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.¹³ The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.¹⁴ Because appellant has not provided such medical opinion evidence

¹¹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *George H. Clark*, 56 ECAB 162 (2004).

¹² *Id.*

¹³ *I.J.*, 59 ECAB 408 (2008).

¹⁴ *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

in this case, he has failed to meet his burden of proof. As he has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a claim.¹⁵

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his diagnosed medical conditions were due to factors of employment, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 21, 2015 is affirmed.

Issued: March 9, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ On appeal, appellant's counsel indicated that appellant's statement of factual and legal arguments challenging OWCP's decision would be submitted. However, no such statement is of record.